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Supreme Court of the United States

October Term, 1965

No. 643

ALBERT THOMPSON,

Petitioner,

against

KAWASAKI KISEN, K. K., ET AL.,

Respondents.

MOTION FOR LEAVE TO SUBMIT A BRIEF, *AMICUS CURIAE,* IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

HARVEY GOLDSTEIN,
Counsel for the American
Trial Lawyers Association,
50 Broadway,
New York, New York.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

HARVEY GOLDSTEIN, being duly sworn, deposes and says:

He is a member of the law firm of Goldstein & Sterenfeld, having an office for the practice of law at 50 Broadway, New York, New York. Deponent is admitted to practice in the Supreme Court of the United States.

This motion for leave to file a brief, *amicus curiae,* in support of the petition for writ of certiorari is submitted on behalf of the American Trial Lawyers Association, a nationwide bar association of more than twenty thousand members, trial counsel in the various fields of personal injury litigation.

The Association is aware of the decision by the United States Court of Appeals for the First Circuit in this

matter, a decision that members of the Admiralty Section of the Association deem to be erroneous and prejudicial to plaintiff longshoremen throughout the nation in view of the concept of uniformity in the maritime law. Its acceptance may well create a new demand for "forum shopping" in order to avoid the effect of various local rules and decisions.

The Court below used a local state statute in this Admiralty and Maritime matter, to permit the use of improper, prejudicial evidence contrary to the dictates of this Court in *Tipton* v. *Socony,* 375 U. S. 34 and *Eichel* v. *New York,* 375 U. S. 253. The reasoning by the Court of Appeals that because the case was first brought in the state court (transferred to the District Court due to diversity), the local rule of evidence would be applicable, although flying in the face of various decisions in the Federal Courts, *A. H. Bull* v. *Ligon,* 285 F. 2d 936 (C. A. 5th) and cases there cited, can only create a breach in the wall of superior, Federal law, uniformly applied throughout the nation.

Further—the effect of the decision by the Court below will obviously permit defense counsel to create the misunderstanding in the minds of jurors that injured plaintiffs seek "two bites from the same apple". The result of the case itself proves the point, a verdict of $7,800.00 when the compensation lien was $9,700.00. Such result seems rather incredible in view of the commonly accepted reasoning of the compensation system where the injured is certain of, but will receive, less money for the injury.

Tipton v. *Socony,* 375 U. S. 34 and *Eichel* v. *New York,* 375 U. S. 253, by this Court, have carefully spelled out the safeguards to plaintiffs in cases of this type, that "evidence of other benefits (should not be) pressed upon the jury (*Tipton,* p. 35)". Defense counsel, by simply not identify-

ing the payments as compensation, has evaded the concept of the two cases. Such an intrusion into the carefully nurtured effort of the various Courts to establish a basic uniformity in these matters has now been breached, and in such manner as to severely prejudice every plaintiff receiving compensation. As such, the American Trial Lawyers Association, whose members are deeply involved in suits of this nature, has a very basic interest in its outcome.

Petitioner's counsel has consented to this motion but respondents' counsel has refused.

Wherefore, deponent respectfully requests that the American Trial Lawyers Association be given leave to file a brief, *amicus curiae,* in support of the petition for writ of certiorari and, if the petition is granted, to file a supporting brief for argument.

HARVEY GOLDSTEIN,
Counsel for the American
Trial Lawyers Association,
50 Broadway,
New York, New York.

Sworn to before me this
day of October, 1965.

HERBERT W. STERENFELD
Notary Public, State of New York
No. 24-24-9180550
Qualified in Kings County
Commission expires March 30, 1966